

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

NETCHOICE, LLC d/b/a)	
NETCHOICE, a 501(c)(6))	
DISTRICT OF COLUMBIA)	
ORGANIZATION, COMPUTER &)	
COMMUNICATIONS INDUSTRY)	
ASSOCIATION d/b/a CCIA, a)	
501(c)(6) NON-STOCK VIRGINIA)	
CORPORATION,)	CIVIL ACTION NO.
Plaintiffs,)	121-cv-00840-RP
)))
)))
VS.))
)))
KEN PAXTON, in his official)	
capacity as Attorney General)	
of Texas,)	
Defendant.)	

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF

SERVANDO ESPARZA

NOVEMBER 15, 2021

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF SERVANDO
ESPARZA, produced remotely as a witness at the instance of the
Defendant, and duly sworn, was taken in the above-styled and
numbered cause on the 15th day of November, 2021, from
2:03 p.m. to 3:40 p.m., before Ashley Cason, Apprentice
Reporter and Notary Public, reported by machine shorthand, via
Zoom, pursuant to the Federal Rules of Civil Procedure,
regarding the provisions stated on the record.

<p>1 APPEARANCES VIA ZOOM 2 For the Plaintiffs: 3 MATTHEW FREDERICK LEHOTSKY KELLER 4 919 Congress Avenue, Suite 1100 Austin, Texas 78701 5 (512) 952-1731 matt@lehotskykeller.com</p> <p>6 For the Defendant:</p> <p>7 BEN WALTON 8 OFFICE OF THE ATTORNEY GENERAL OF TEXAS General Litigation Division 9 P.O. Box 12548, Austin, Texas 78711 10 (512) 463-2120 benjamin.walton@oag.texas.gov</p> <p>11 Also Present: 12 JEREMY MALTZ</p> <p>13 Videotaped by: 14 BRIAN CHRISTOPHER</p> <p>15 16 17 18 19 20 21 22 23 24 25</p>	<p>2 1 PROCEEDINGS 2 THE REPORTER: Today's date is Monday, November 3 15th, 2021. The time is 2:02 p.m. This is the videotaped oral 4 deposition of Servando Esparza, and it is being conducted 5 remotely. The witness is located in -- 6 Where are you located, Mr. Esparza? 7 THE WITNESS: Austin, Texas. 8 THE REPORTER: The witness is located in Austin, 9 Texas. 10 My name is Ashley Cason, Apprentice Reporter. I 11 am administering the oath and reporting the deposition remotely 12 by stenographic means from Hutto, Texas. 13 Would Counsel please state their appearances and 14 locations for the record, beginning with the Plaintiffs' 15 counsel. 16 MR. FREDRICK: Yes. Matthew Fredrick. I am 17 located in Austin, Texas. 18 MR. WALTON: Ben Walton from the Attorney 19 General's Office. I'm physically located in Austin, Texas. 20 And I'm counsel for the Defendant. 21 SERVANDO ESPARZA, 22 having been first duly sworn, testified as follows: 23 EXAMINATION 24 BY MR. WALTON: 25 Q. Good afternoon, Mr. Esparza. Can you hear me all</p>
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<p>1 INDEX PAGE 2 Appearances..... 2 3 WITNESS: SERVANDO ESPARZA 4 Examination by BEN WALTON..... 4 5 Signature and Changes..... 55 6 Reporter's Certificate..... 57</p> <p>7 8 9 10 11 EXHIBITS 12 NUMBER DESCRIPTION PAGE 13 Exhibit 1 19 Technology Network's Declaration 14 Exhibit 2 31 House Bill 20</p> <p>15 16 17 18 19 20 21 22 23 24 25</p>	<p>3 1 right? 2 A. Yup. 3 Q. Okay. Wonderful. We are -- we are under oath. 4 We're at a formal deposition, even though we're taking this 5 remotely, instead of all being physically present together. I 6 want to go ahead and go over a couple of ground rules, just 7 housekeeping matters, just to make sure we're all on the same 8 page. So bear with me for a minute if your attorney already 9 went over this with you. I just want to make sure that all of 10 our expectations are the same. 11 First off, you do understand that having just 12 been sworn by the court reporter, you are under obligation 13 today to tell the truth just as you would be if you were in 14 front of a judge and a jury in a courtroom? 15 A. Yup, I do. 16 Q. Okay. And also, the court reporter is taking down a 17 written record of everything that is said, so that means a 18 couple of things. First is: You and I need to not be talking 19 at the same time. So I will do my best. I know there's a lot 20 of glitches sometimes with -- with technology, but I'll do my 21 best to let you finish talking and answering a question before 22 I jump in with another question. And if you could allow me to 23 finish my questions, even if you know where I'm going, just 24 allow me to finish the question before you start answering. 25 That'll make life a lot easier for our court reporter today.</p>
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<p>1 Is that all right with you?</p> <p>2 A. Sounds like a plan.</p> <p>3 Q. And if at any time I do interrupt you, it will not be</p> <p>4 on purpose, so please bring that to my attention and I will</p> <p>5 stop talking and let you finish whatever it is you were about</p> <p>6 to say. It is not my intention to cut you off or talk over you</p> <p>7 at any point today. Okay?</p> <p>8 A. Okay.</p> <p>9 Q. And the second thing that -- that the written record</p> <p>10 means is -- you've already been doing a good job of this --</p> <p>11 we're going to have to actually use words instead of nodding</p> <p>12 our heads or shaking our heads. We'll have to use -- use words</p> <p>13 such as yes, no, and other verbal descriptors, so that it comes</p> <p>14 through clearly on a written transcript. So you've been doing</p> <p>15 a great job with that, but just please do remember to continue</p> <p>16 to answer verbally instead of simply with body language or</p> <p>17 physical queues; is that understood?</p> <p>18 A. Understood.</p> <p>19 Q. Thank you. And if at any point I ask you a question</p> <p>20 and you're not really sure what I'm talking about, feel free to</p> <p>21 ask me to clarify. That's what we're here for today, is not to</p> <p>22 talk past each other, but to try to communicate clearly. So</p> <p>23 please bring it to my attention whenever you're not sure what</p> <p>24 I'm talking about, and I'll try to rephrase and clarify for you</p> <p>25 as best as possible.</p>	<p>6</p> <p>1 ask: How did you come to write that declaration?</p> <p>2 A. We had written -- at TechNet, we had written a</p> <p>3 declaration on a similar lawsuit in -- in Florida, and we filed</p> <p>4 a declaration in that case.</p> <p>5 Q. Okay. And so the declaration that you filed in the</p> <p>6 Texas case, is it substantially similar to the declaration you</p> <p>7 filed in the Florida case?</p> <p>8 A. Substantial? No. I would say, having not reviewed</p> <p>9 the Florida one in a while, I would say it's -- I would say</p> <p>10 very similar.</p> <p>11 Q. Okay. Sure. And -- and I'm not, you know, holding</p> <p>12 to the details, but as you sit here today, to your</p> <p>13 recollection, do you recall any differences between the Texas</p> <p>14 and Florida declaration?</p> <p>15 MR. FREDRICK: Object to the form of the</p> <p>16 question.</p> <p>17 You -- you may answer.</p> <p>18 THE WITNESS: Answer? Okay.</p> <p>19 A. I remember a couple of -- of things that would --</p> <p>20 that I focused on in the Florida one that I didn't -- that it</p> <p>21 wasn't included in the Texas bill, so I didn't include it. So</p> <p>22 there were several arguments that -- that were different. So</p> <p>23 will -- will you repeat the question again?</p> <p>24 Q. (BY MR. WALTON) Yes. I was just saying, do you</p> <p>25 remember -- do you recall any differences between your Texas</p>
<p>1 And then last, if you want to take a break at</p> <p>2 any time during the deposition, that is completely fine. I</p> <p>3 would simply ask that if I've asked a question, you go ahead</p> <p>4 and answer the question. And then at the end of any of your</p> <p>5 answers, feel free to just say, I'd like to take a break now,</p> <p>6 and we will certainly do that. All right?</p> <p>7 A. Understood.</p> <p>8 Q. All righty. The first question I have for you today</p> <p>9 is: Have you ever given a deposition before?</p> <p>10 A. No.</p> <p>11 Q. All right. Well, welcome to the wonderful world of</p> <p>12 depositions. What -- what did you do to prepare for your</p> <p>13 testimony here today?</p> <p>14 A. I reread House Bill 20. I reread the declaration</p> <p>15 that -- that I signed on behalf of TechNet, and met with our</p> <p>16 attorneys a couple of times.</p> <p>17 Q. Sure. Did you -- did you talk with anyone other than</p> <p>18 your attorneys in preparation for your testimony here today?</p> <p>19 A. About what I would say?</p> <p>20 Q. Yes.</p> <p>21 A. No. Other than just that it's happening and -- and</p> <p>22 when it was occurring.</p> <p>23 Q. Okay. What -- how did you come to write a -- a</p> <p>24 declaration -- well, the declaration that you've entered in</p> <p>25 this lawsuit. We'll look at it in a minute, but I just want to</p>	<p>7</p> <p>1 declaration and your Florida declaration, so --</p> <p>2 A. Yeah. I do, yeah.</p> <p>3 Q. Yeah. Thank you for that answer.</p> <p>4 Do you recall some of the specific material that</p> <p>5 you chose to leave out of the Texas declaration that you had</p> <p>6 included in the Florida declaration?</p> <p>7 MR. FREDRICK: Objection; form.</p> <p>8 You may answer.</p> <p>9 A. I remember one thing that I specifically remember</p> <p>10 calling out in the -- in the Florida one -- well, I actually --</p> <p>11 if I would have it in front of me, I would be absolutely</p> <p>12 certain. I -- I would want to say that I intended to say that</p> <p>13 in the Florida one, but without it in front of me, I don't want</p> <p>14 to be -- I don't want to say one hundred percent sure.</p> <p>15 Q. (BY MR. WALTON) Sure, and that's fine. What else</p> <p>16 did you do, if anything, to prepare the declaration in this</p> <p>17 Texas case?</p> <p>18 A. Looked at the testimony that we provided.</p> <p>19 Oftentimes, I would have notes that -- like, we would send a</p> <p>20 letter to the committee of jurisdiction where the bill was --</p> <p>21 was heard, I think in this case was a representative -- a</p> <p>22 Chairman Ashby's committee, the select committee on</p> <p>23 constitutional -- I can't remember the full term -- the full</p> <p>24 name of it -- but based on the -- the -- what I sent to that</p> <p>25 office and that committee, some of those notes which had our</p>

<p>1 arguments. And what I did was kind of refer to the arguments 2 we made in that to -- to make sure and include in the 3 declaration.</p> <p>4 Q. I see. Other than your communications with that 5 committee, did you have any other communications with the 6 legislature or part of the Texas legislature as HB 20 was being 7 considered?</p> <p>8 A. Yes.</p> <p>9 Q. And what were those communications?</p> <p>10 A. I met several times with the -- a -- several 11 legislators. This House Bill 20, specifically, I had multiple 12 conversations with Chairman Hughes' office, his -- his actions 13 committee director. I met with Representative Cain's chief of 14 staff a couple of times to provide feedback on the bill. I 15 testified on -- on -- against HB 20 in committee, and I 16 answered questions from a couple of legislators who were on 17 that committee.</p> <p>18 Q. Okay. Are there any other written communications 19 that you submitted to anyone in the Texas legislature regarding 20 HB 20?</p> <p>21 A. Yes. I sent -- I sent a letter to the Senate State 22 Affairs Committee. I sent -- I sent feedback to the committee 23 and some committee members ahead of, like, the hearing being 24 held. Oftentimes provided copies of it and -- and -- and 25 this -- this was both on House Bill 20 and kind of the -- the</p>	<p>10 1 arguments I -- I used a different number so -- so that's a -- 2 that's a discrepancy between, you know, what I provided 3 legislators and what was included in the declaration.</p> <p>4 Q. I see. Any other differences that you recall?</p> <p>5 MR. FREDRICK: Object to the form the question.</p> <p>6 You may answer.</p> <p>7 A. Nothing -- nothing major that I can recollect.</p> <p>8 Everything else is just maybe the way that it's structured, so 9 nothing -- nothing else.</p> <p>10 (BY MR. WALTON) Okay. Going back to the Florida 11 declaration, how did you decide to file a declaration in that 12 case?</p> <p>13 A. We have some check-in calls with other trade 14 associations and just in members in general just to kind of 15 catch up on a number of issues on -- on that one. NetChoice 16 let us know that they were, you know, moving forward with the 17 case, and that would -- could happen is, you know, any entity 18 that wanted to participate, and in support of NetChoice and 19 CCIA's, you know, case, that one way that it could be helpful 20 is through a declaration. And at TechNet, we decided to file a 21 declaration in support of -- with the Florida case that...</p> <p>22 Q. So walk me through a little bit, just generally, 23 what -- what is TechNet?</p> <p>24 A. Yeah. TechNet -- Tech Association, it represents a 25 number of different types of tech -- tech companies. And I</p>
<p>1 bills ahead of time; these sort of kept morphing. 2 And I should say, in the senate, it was a 3 companion bill that the name is escaping me right now, that was 4 the communication I -- I had with senate staff. At that point, 5 it wasn't very clear that House Bill 20 was going to be the -- 6 the vehicle, as -- as several bills were moving through the 7 process. So feedback to the -- the members that stayed on 8 those committees. I provided some additional feedback to -- 9 like I mentioned, I met with Cain's office to provide some -- 10 some recommendations that they -- they took into the bill. 11 Q. I see. The -- the material that is expressed in your 12 declaration for purposes of this lawsuit, are those the same -- 13 the same facts and opinions that you presented to the Texas 14 legislature? 15 A. They're similar -- 16 Q. Okay. 17 A. -- they're not exact. 18 Q. Sure. Do -- do you recall including anything in this 19 declaration that you did not include in your communications 20 with the Texas legislature? 21 A. Yes. I -- there's a citation for the number of -- of 22 spam or something related to spam in the declaration. I did 23 not use that number specifically for the communication on the 24 email provisions in House Bill 20. I used some other numbers 25 but -- but I was going through -- I was kind of refining the</p>	<p>11 1 think at this point, the number sort of hovers sort of around 2 80 -- just kind of folks -- that just ebb and flows in terms of 3 the number of members, but just kind of ran -- runs through all 4 types of -- of segments of technology including sort of 5 traditional IT, you know, gig economy, delivery networks, 6 transportation, autonomous vehicles. And so we just sort of 7 work -- telehealth, so just a number of sort of different types 8 of members that are members of -- of TechNet. And -- and we 9 have -- we have a state team and a federal team. And so we -- 10 we sort of focus on, obviously, sort of similar issues on 11 behalf of those companies, but at two different levels. My job 12 specifically is focused on the Southeast. 13 Apologies for that noise. 14 MR. WALTON: No, that is fine. 15 (BY MR. WALTON) What is your specific job title? 16 A. It is executive director of Texas in the southeast. 17 Q. And what does that mean? 18 A. That means that my -- it's my responsibility to 19 provide updates, provide bill tracking, to provide reports 20 and -- and updates to -- to members and in the areas that I 21 represent, which are Texas -- and it recently changed 22 November 1st -- but essentially just -- just follow the coast 23 up to Virginia. So it's been my responsibility to do bill 24 tracking, let -- hold some, what we call, public policy 25 committee meetings where I provide, you know, Here's what's</p>

1 happening in these different states, summaries of -- of 2 legislative sessions, special sessions coming up. Here are the 3 bills that were filed this week, those -- those types of 4 updates that -- that members would like. 5 Q. What does it mean to be a member of TechNet? 6 A. That means a -- a company that pays dues into the 7 association and takes part in -- in the -- in sort of helping 8 shape policy and provides feedback to -- to the TechNet staff. 9 Q. How is TechNet governed? 10 MR. FREDRICK: Objection; form. 11 You may answer. 12 A. Governed? Help explain that. Like, who is my boss 13 and what is sort of the structure of my boss? Or who do we -- 14 who do they sort of answer to? 15 Q. (BY MR. WALTON) Yeah. What I'm trying to get at is 16 are they -- are they overseen by a board or is it just a 17 president or is there an executive director at the top that 18 calls all the shots, I guess? What's the governing structure 19 internally of TechNet? 20 A. So in terms of -- 21 MR. FREDRICK: Objection; form. 22 You can answer. 23 A. Internally? So there is a vice president of -- 24 and -- and I may get the -- the job titles wrong, but generally 25 his title is in charge -- in charge of state policy. And so	14 1 bill. Does -- yeah, you -- you asked a question, "opposed" I 2 would say, I had a lot of members who had a lot -- who had 3 concerns with the bill that may have not specifically said to 4 me, you know, we're -- we're opposed to it. A lot of the 5 feedback I tend to get is, you know -- you know, half of the 6 company, we -- we have issues with facts, which lets me know 7 that -- to kind of include them in a general of idea who wants 8 TechNet to engage and why. 9 Q. Got you. So out of those -- out of those members 10 that were -- indicated some type of concern with HB 20, did 11 you -- am I correct in understanding, did you say there were a 12 handful of those? 13 A. At least a handful, yes. 14 Q. Oh, okay. And not to pin you down for an exact 15 number, but just to make sure we're using language generally 16 the same way, would you say a handful is fewer than ten or more 17 than ten? 18 A. That's a tough number. I would say it's likely lower 19 than ten. 20 Q. Okay. Would you be more comfortable saying it was 21 likely lower than 15? 22 A. Yeah. Lower than 15, I feel comfortable -- well, I 23 would say, it -- it's got to be under 15, at least the ones 24 that shared a ton of -- that shared more feedback that sort of 25 was an issue that's -- that spoke directly to me, you know.
1 there's several regions like I mentioned. Minus Texas and the 2 Southeast, there's other -- other executive directors we report 3 to. His name is David Edmonson. And then David Edmonson 4 reports directly to Linda Moore who's our president of the 5 association. 6 Q. (BY MR. WALTON) So who -- who decided that TechNet 7 was opposed to HB 20? 8 MR. FREDRICK: Objection; form. 9 You can answer. 10 A. It was -- part of it is members provide feedback. 11 It's been something that TechNet opposed a similar bill when it 12 was filed in Texas in 2019. So it -- it's an issue that 13 TechNet, you know, opposes and has opposed. And if nothing 14 sort of changes, unless some members say, you know, Hey, we -- 15 somehow our opinion has changed on this, then TechNet was going 16 to be opposed to it and remains opposed to bills like that. 17 Q. (BY MR. WALTON) It -- is there a process that 18 TechNet uses to find out what its members think about certain 19 bills? 20 A. A formal process, no. It's largely -- largely 21 feedback -- informal feedback from members. 22 Q. So how many members indicated to TechNet that they 23 would oppose or be opposed to HB 20? 24 A. I don't have a specific number. I would say it's a 25 handful of -- of members shared that they had concerns with the	15 17 1 Q. I see. So for the other members of TechNet, do you 2 know whether they have concerns with HB 20? 3 A. Some of them, you know, do not have social media 4 platforms as part of their business, so they just didn't weigh 5 in at all. We also have a lot of other -- not a lot, but just 6 some members who -- it's fairly narrow, the scope with what 7 they -- what issues they engage with TechNet on. I can, you 8 know, imagine a telemedicine-type company, they're really 9 not -- they're only going to pay attention to the sort of 10 telehealth-type issues, employment issues, gig economy stuff. 11 But they don't -- they wouldn't get involved in any 12 conversations that I would have on social media platforms or 13 they would not respond to, you know, an email request for 14 feedback on a bill, but on social platforms. 15 Q. Okay. What -- what is TechNet's relationship to the 16 Plaintiffs in this lawsuit? 17 MR. FREDRICK: Objection to form. 18 You can answer. 19 A. NetChoice? We worked really well with them on a 20 number of issues and just kind of collaborate on -- on sharing, 21 you know, in -- intel on the legislature proposals. 22 Oftentimes, we compare notes on, you know, specifically 23 problematic portions of bills and overall just share kind of 24 the key learnings that a lot of us are learning -- are seeing in 25 certain states. Just kind of compare notes is what I would

<p>1 say.</p> <p>2 Q. (BY MR. WALTON) Is -- is there a financial 3 relationship between NetChoice and TechNet?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. And you mentioned NetChoice. What about another 6 entity that is a plaintiff in this case, the computer and 7 communications industry association, abbreviated as CCIA, are 8 you familiar with that entity?</p> <p>9 A. Just in the name.</p> <p>10 Q. So you've never had any interactions with them in -- 11 in your capacity as executive director at TechNet?</p> <p>12 A. Not that I can recall. They may have been on a phone 13 call or like a -- like a group call, but I can't recall. I -- 14 I can't recall to you saying, Oh, I had a conversation with so 15 and so from CCIA.</p> <p>16 Q. Sure. So I take it then that you're not aware of any 17 financial relationship between TechNet and CCIA?</p> <p>18 A. Not that I'm aware.</p> <p>19 Q. Okay. What I'm going to do now -- and I think this 20 will work -- I'm going to send through the chat function a PDF 21 copy of your declaration in this case, just so that we all know 22 that we're referencing the same document. I can briefly share 23 my screen to make sure that we are looking at the same document 24 and then I'll just let -- let each of us use our copy, but the 25 one I'll send through the chat function, feel free to refer to</p>	<p>18</p> <p>1 declaration, that's the document that I'm referring to. Feel 2 free to refer to it as needed throughout the rest of our time 3 this afternoon. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. Who drafted this document?</p> <p>6 A. I drafted it.</p> <p>7 Q. Did anyone provide feedback on it or review it before 8 you signed it?</p> <p>9 A. David Edmonson, who's my boss, looked at it. I also 10 sent it to Trent Edwards in our team, who is responsible for 11 kind of our engagement with -- with cases. I'm not entirely 12 sure if he reviewed it, but I know I -- I sent it to him. And 13 then I also sent it to -- to Chris with NetChoice for his -- 14 you know, for -- for making sure that the titles of those cases 15 were right and if he saw anything that was overlooked in it 16 or -- or -- or wrong in it, I should say.</p> <p>17 Q. And did either of those three individuals provide you 18 with any feedback?</p> <p>19 A. I can't remember if David provided feedback. I know 20 that Chris provided some feedback on -- I think, my draft of it 21 said TechNet and didn't actually spell out our legal name, so 22 he suggested adding that. He also, I believe, shared the -- 23 the actual verbiage of what we're supposed to say of the name 24 of the case in -- in that stuff. Those two things, I can 25 definitely recall Chris from NetChoice mentioning in -- in</p>
<p>19</p> <p>1 that as much as you like.</p> <p>2 MR. WALTON: And I'll ask the court reporter to 3 mark it as Exhibit 1 to this deposition.</p> <p>4 (Exhibit Number 1 was marked.)</p> <p>5 Q. (BY MR. WALTON) Okay. Mr. Esparza, just let me know 6 when you are able to download and open the PDF file that I just 7 sent through the chat function.</p> <p>8 A. Okay. I've opened it.</p> <p>9 Q. And is this PDF document a copy of the declaration 10 that you submitted in this case?</p> <p>11 A. Without doing kind of like a control/compare-type 12 deal, it looks like what I submitted.</p> <p>13 Q. Sure. Okay. I am going to briefly share my screen.</p> <p>14 So we established we're looking at the same PDF 15 file. Can you see my screen now, Mr. Esparza?</p> <p>16 A. Yes.</p> <p>17 Q. I have a document here, and then on page 2 of the PDF 18 file, and it appears to be the first page of your declaration 19 in this case. Is that what it appears to you to be?</p> <p>20 A. Say that again, sorry. It cut off for me.</p> <p>21 Q. Yes. This -- this appears to be the first page of 22 the declaration that you submitted in this lawsuit; is that 23 what it appears to you to be?</p> <p>24 A. Yes. What you're showing me on the screen, yes.</p> <p>25 Q. All right. Well, if I refer to Exhibit 1 or to your</p>	<p>19</p> <p>1 response to the draft that I sent him.</p> <p>2 Q. Sure. Did Chris have any other suggestions?</p> <p>3 A. I -- I --</p> <p>4 MR. FREDRICK: Object to form.</p> <p>5 You can answer.</p> <p>6 A. I -- it's not coming up what those were. Those first 7 two I just remember were ones that were really clear on what I 8 modified.</p> <p>9 Q. (BY MR. WALTON) Sure. And just to be clear, for the 10 record, are you saying that -- that you know Chris didn't make 11 any other suggestions, or just that you don't know whether he 12 did?</p> <p>13 MR. FREDRICK: Objection; form.</p> <p>14 You can answer.</p> <p>15 A. That I don't know what those are. I -- I believe 16 there were some others. I can't recall what they were.</p> <p>17 Q. (BY MR. WALTON) Okay. I understand now. Thank you. 18 And then I believe there was a third person, I 19 can't remember the name, but that you said you may have sent it 20 to. Did you get any other feedback from that other individual?</p> <p>21 A. From Trent Edwards in our team? No, I don't believe 22 I received anything back from him.</p> <p>23 Q. Okay. Did you receive any feedback from the 24 legislators or legislative offices that you were in 25 communication with while HB 20 was still a bill?</p>

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1 MR. FREDRICK: Objection; form. 2 You can answer. 3 A. Repeat the question. 4 Q. (BY MR. WALTON) Sure. While HB 20 was still under 5 consideration by the Texas legislature, did you receive any 6 feedback from the legislators that you expressed concerns to 7 about the bill? 8 MR. FREDRICK: Objection; form. 9 You can answer. 10 A. Yes. I heard -- I heard some -- like I mentioned, I 11 met with Cain's office. I -- I shared our concerns with -- 12 with -- with them. They agreed to make some adjustments to it 13 and that specifically his chief of staff would talk to 14 Representative Cain about making some additional changes. At 15 that point I -- I believe I either -- I met with him at his 16 office and we kind of went through the bill and I highlighted a 17 couple of issues and where those concerns were. 18 I also remember speaking with -- over the phone 19 with Drew Tedford who works as Senator Hughes' committee -- 20 committee director, I -- I believe is his title. But usually 21 he's kind of the go-to person in Senator Hughes' office on it. 22 Met with him and provided some feedback on -- on the bill. 23 I also spoke with representative -- what is her 24 name? From Houston, Ann Johnson's team on -- specifically 25 asked for some feedback prior to the hearing.	1 spam or to -- to stop spam. And so we had a couple of 2 recommendations that if they would clear it up, that it would 3 still target, you know, what -- what the bill was trying to 4 target, just not necessary -- and -- and while at the same 5 time, our members sort of mentioned that it would be -- they 6 would still maintain some control over being able to block some 7 spam. 8 Q. And what changes did you want to see to those 9 provisions? 10 A. Without the bill in front of me and -- and -- and 11 notes just showing the -- the comparison, you know, I can just 12 sort of talk generally about what -- what that was. 13 Q. That's totally fine. 14 A. So one of them was this -- this discussion of sort of 15 blocking and -- and electronic communications and -- and I 16 think we were -- we had discussed, based on content -- 17 including the terms based on content to that so that it would 18 essentially let, you know, some TechNet members be able to use 19 sort of email history, either reckless sort of behavior, 20 mismanagement -- mismanagement of lists or in any sort of just 21 flags that are raised by email service providers that -- that 22 would say this -- this person, it seems like it mentioned a 23 nefarious user or has sent spam in the past. And if that 24 change was on there, that the company would still be able to 25 block this person from sending something. So some of that was		
1 I sent some additional potential questions 2 and -- and feedback on our concerns to Representative Bucy in 3 the House prior to the hearing, as he was interested in 4 potentially asking some questions on the bill. So, yeah. So 5 just throughout the process, I've provided some -- the feedback 6 throughout. 7 Q. (BY MR. WALTON) Sure. Do you know whether the bill 8 was modified or amended in any way as -- to reflect the 9 concerns that you shared with these different legislators? 10 A. Do I know if they made modifications based on some 11 feedback that TechNet provided specifically? 12 Q. Yes. 13 A. I -- I don't know that they made it at our request. 14 I know that -- and -- and the reason why is because I believe 15 other members were meeting with them, so I don't want to sort 16 of assume responsibility or take credit for -- for something 17 that I -- that maybe is kind of a group activity, you know. 18 Q. Sure. Sure. What were some of those changes that at 19 least were consistent with the terms that TechNet directly 20 expressed? 21 A. In -- in House Bill 20, with -- with Representative 22 Cain's office, we specifically worry -- were worried about 23 portions of the email provisions that were added on there. 24 There was concerns from several TechNet members that, without 25 some clarifications, that it would be easier to -- to sort of	23	1 dealing with being able to leave as many controls for the email 2 service providers. 3 Q. I see. Do you know whether any of those portions 4 of -- of the bill were changed and modified before it passed? 5 A. Sorry. Yes. That -- that portion, some changes 6 along the lines of what I mentioned was -- was made on the 7 email provisions. 8 Q. And is it TechNet's position that those changes were 9 sufficient or insufficient to meet the concerns of -- of the 10 members in the committee? 11 MR. FREDRICK: Objection; form. 12 You can answer. 13 A. It's insufficient and insufficient in what? Say that 14 again. 15 Q. (BY MR. WALTON) Sure. The changes that were made 16 for the email service providers that you were just describing, 17 were those changes sufficient to address the concerns that 18 TechNet had with that portion of HB 20? 19 MR. FREDRICK: Same objection. 20 A. Not all concerns were alleviated, but it -- but it -- 21 it was an improvement. 22 Q. (BY MR. WALTON) Sure. So as -- as you recall, what 23 concerns still remain? 24 MR. FREDRICK: Objection; form. 25 You can answer.	25

<p>1 A. Just generally why the need for the change all 2 together if -- if -- if there could be misuse of the provision 3 that would make it legal to send some spam, I think we just 4 didn't see the -- the need for the change at all. Included 5 oftentimes when I had conversations with legislative staff and 6 members about the specific piece, no one was able to sort of 7 point to exactly what the -- the problem that we were fixing, 8 so the problem was generally why that was still in the bill. 9 That make sense?</p> <p>10 Q. (BY MR. WALTON) Okay. Looking at your declaration 11 here, I see in the first few paragraphs that you describe 12 TechNet, and I think you and I have gone over a basic 13 description of TechNet -- TechNet's functions, so I don't want 14 to spend too much more time on some of the earlier paragraphs, 15 but I do want to hit just a few more questions I have.</p> <p>16 For -- for clarity, is TechNet itself a social 17 media platform?</p> <p>18 A. TechNet itself is not a social media platform.</p> <p>19 Q. And is TechNet itself an email service provider?</p> <p>20 A. No, TechNet is not an email service provider.</p> <p>21 Q. Pardon me. Here, I'm running through my notes trying 22 to be efficient.</p> <p>23 But back up in paragraph 1, I'm on page 2 of the 24 PDF file that I sent through the chat. It's numbered page 1 at 25 the bottom, it's paragraph 1 of your declaration. Do you see</p>	<p>26</p> <p>1 A. In normal years, once a year. COVID, we had a 2 virtual conference instead. But it's been -- it's -- it's -- 3 we try to do it once a year. I've only been here a year so 4 I've been to just two.</p> <p>5 Q. I see. At either of the last couple of conferences 6 that you've had, has there been any explicit discussion of 7 HB 20 or that's similar to Florida law?</p> <p>8 A. Not that I recall.</p> <p>9 Q. And about how many of your members attend or maybe 10 participate virtually in those conferences?</p> <p>11 A. I don't have the number on -- on virtually. The -- 12 the number of TechNet members that -- that attended, it would 13 be between 80 to 100. This last week I don't have the final 14 numbers just cause I -- I'm going with a -- a number that -- 15 that I was told was 140-something, but that included TechNet 16 staff and legislators that attended, so it -- the -- the 17 dealt -- the difference would be the TechNet members that 18 attended.</p> <p>19 Q. How many of TechNet's members are social media 20 platforms?</p> <p>21 MR. FREDRICK: Object to the form of the 22 question.</p> <p>23 You can answer.</p> <p>24 A. That own a social media platform that -- as described 25 by HB 20?</p>
<p>27</p> <p>1 that paragraph?</p> <p>2 A. Paragraph 1, yes.</p> <p>3 Q. The -- the last line refers to TechNet's agenda.</p> <p>4 What do you mean by that?</p> <p>5 A. TechNet, we have state policy principles and -- and 6 the agenda is the policy principles.</p> <p>7 Q. And what are those policy principles?</p> <p>8 MR. FREDRICK: Objection; form.</p> <p>9 You can answer.</p> <p>10 A. It is -- it is a set of -- we often describe it as 11 sort of like a constitution. It's what -- and we have a state 12 one and a federal one. So the state team, I look to those 13 state policy principles as sort of a guiding -- sort of a 14 principal for TechNet's engagement and -- and how we would 15 speak about it, why we would be involved, and -- and in 16 generally -- generally sort of look to that as sort of -- yeah, 17 like sort of our constitution.</p> <p>18 Q. (BY MR. WALTON) Are those policy principles publicly 19 available?</p> <p>20 MR. FREDRICK: Objection; form.</p> <p>21 You can answer.</p> <p>22 A. Yes, they're on our website. We'll flag that they -- 23 they -- they changed after our state policy conference was just 24 happened last week.</p> <p>25 Q. (BY MR. WALTON) How often is that conference held?</p>	<p>29</p> <p>1 Q. (BY MR. WALTON) That's right. How many of TechNet's 2 members are responsible for operating a social media platform 3 as described by HB 20?</p> <p>4 MR. FREDRICK: Objection; form.</p> <p>5 You can answer.</p> <p>6 A. I -- I don't have a full number. And then not -- not 7 to be evasive, it's just several members had mentioned that 8 they felt like they could be roped into the definition of 9 social media platform. And -- and -- and so I don't know if to 10 count those as well, versus those that -- that -- that I think 11 a lot of folks assumed were included in the bill. So I don't 12 want to be evasive but I -- I just can't give you a total 13 number because I'd -- I'd be wrong, likely.</p> <p>14 Q. (BY MR. WALTON) Sure. Can you -- can you tell me 15 whether there are any members of TechNet that you do know fall 16 within the definition of a social media platform under HB 20?</p> <p>17 A. Yes.</p> <p>18 Q. And what would those members be --</p> <p>19 MR. FREDRICK: Objection; form.</p> <p>20 A. -- that --</p> <p>21 MR. FREDRICK: You can answer.</p> <p>22 A. -- that I know that Facebook or Meta would -- would 23 fall under the definition for their -- what was -- you know, 24 what's been called Facebook, and I think the user threshold 25 will still capture them under Instagram. The -- who else was</p>

	<p>1 it? I don't know the user threshold for, like, a Twitch. And 2 so that is -- that -- I believe that's owned by Amazon, so that 3 might be -- it might be farthered into that definition. 4 Depending on the definition of users, I think Salesforce, you 5 know, may be included in it for some of the programs that they 6 have. I think it's -- if you told the number of people that 7 can access some of their platforms, and they're considered 8 users -- licensees, they could be included in that. It's hard 9 to tell just because a lot of these companies sort of change 10 ownership, so I -- I don't know very much about the -- the 11 other ones. And without my notes that I had for -- kind of the 12 prep for some of the testimony I give on HB 20, that -- that 13 list I provided, it is sort of the ones I would call out.</p> <p>14 Q. (BY MR. WALTON) I see. And -- and -- and then a 15 similar question regarding email service providers, are there 16 any members of TechNet that you do believe would fall under the 17 requirements of HB 20?</p> <p>18 A. Without -- without the definition right in front of 19 me, I can only give you a sense of -- of -- of who provided 20 feedback on that portion. I don't want to say they're 21 definitely in there without that -- without the definition 22 being in my face, especially because that one's the one that 23 had a lot of last-minute changes.</p> <p>24 Q. Sure. Let me go ahead then and I'll send another PDF 25 document through the chat. This will be the copy of HB 20, and</p>
<p>1 we can look at that together.</p> <p>2 Okay. While you're opening that document, 3 Mr. Esparza, I'll just note for the record that I will ask the 4 court reporter to label this document Exhibit 2 to your 5 deposition.</p> <p>6 (Exhibit Number 2 was marked.)</p> <p>7 Q. (BY MR. WALTON) And just let me know when you've 8 opened that up and are able to -- to scroll through that 9 document.</p> <p>10 A. Yup, I have it open.</p> <p>11 Q. If you would, Mr. Esparza, scroll down to page 9 12 using the PDF's internal page notion. Page 9 of that PDF 13 document towards the bottom of the page, beginning at line 12, 14 it starts with section 5 of HB 20. Do you see that portion?</p> <p>15 A. Section 5 on line 12, page 9, yes.</p> <p>16 Q. Yes, sir. Do you see section 321.054 that begins on 17 line 14 of that same page?</p> <p>18 A. Yes.</p> <p>19 Q. What is your understanding regarding whether any of 20 TechNet's members are affected by this provision?</p> <p>21 MR. FREDRICK: Objection; form.</p> <p>22 You can answer.</p> <p>23 A. It -- well, I -- I need to look at the definition of 24 email service provider, which is in that -- in that -- in 25 section 321 of the code, since it refers to a provider, but</p>	<p>1 the -- the definition's not on here.</p> <p>2 Q. (BY MR. WALTON) Sure. So as you sit here today, 3 you're not able to tell me whether any of TechNet's members 4 would be governed by section 321.054?</p> <p>5 MR. FREDRICK: Objection; form.</p> <p>6 You can answer.</p> <p>7 A. And I would only -- I would only be guessing and -- 8 and not be -- not feel -- not feel a hundred percent 9 comfortable...</p> <p>10 Q. (BY MR. WALTON) Okay. That's fine.</p> <p>11 Let's go back to your declaration, Mr. Esparza, 12 Exhibit 1, and let's go to paragraph 4. And that's on the 13 fourth PDF page in my version of the document. Do you see 14 paragraph 4 of your declaration, sir?</p> <p>15 A. Yes.</p> <p>16 Q. The -- the first sentence under that paragraph begins 17 by stating: Social media platforms understand that they have 18 an obligation to remove objectionable content. What is that 19 obligation to remove the objectionable content?</p> <p>20 MR. FREDRICK: Objection; form.</p> <p>21 You can answer.</p> <p>22 A. I -- my opinion would be that most -- that most of 23 these social media platforms want to be workplace friendly and 24 family friendly, so their -- their obligation would, you 25 know -- so that harmful content isn't, you know, readily</p> <p>1 accessible on someone's feedback or -- or whatever it's called 2 where -- where -- homepage or whatever.</p> <p>3 Q. (BY MR. WALTON) So just to be clear, are you talking 4 about an obligation that arises from law?</p> <p>5 A. When I wrote this, no. No specific law that forces 6 them to.</p> <p>7 Q. Is it an obligation that arises from some kind of -- 8 of contract?</p> <p>9 MR. FREDRICK: Objection; form.</p> <p>10 You can answer.</p> <p>11 A. As part of some contract? I wouldn't -- I -- I -- I 12 don't know. That doesn't make sense to me. A contract with 13 whom?</p> <p>14 Q. (BY MR. WALTON) Yeah. Well, that's what I was 15 wondering, too. I'm just wondering where this obligation comes 16 from.</p> <p>17 MR. FREDRICK: Object to the form of the 18 question.</p> <p>19 But you can answer.</p> <p>20 A. I think it's just sort of common -- maybe -- my 21 opinion would be that they know that they -- that -- that it 22 would hurt the number of users it would get. It wouldn't be an 23 attractive platform for -- for as -- for as many people as 24 possible. That if they were, you know, I -- I think it's just 25 more of a social sort of a -- it would be the right thing to</p>

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<p>1 do, instead of it -- and like an obligation to a specific 2 government entity or -- or individual of some sort. That's 3 what I meant that -- when I -- when I wrote it that way.</p> <p>4 Q. (BY MR. WALTON) Okay. The -- the second sentence in 5 that paragraph states: Companies take this responsibility 6 seriously, removing harmful content while keeping their 7 services open to their broad range of ideas.</p> <p>8 What do you mean by "harmful content"?</p> <p>9 MR. FREDRICK: Object to the form.</p> <p>10 You can answer.</p> <p>11 A. The -- the harmful content that I often refer to and 12 I -- and I described it in testimony, it's sort of a "lawful 13 but awful" is -- is the term that -- that we were using quite a 14 bit. It's -- it's something that like harassment is 15 harassment, something that like Nazi propaganda or -- or claims 16 of that the holocaust didn't occur, or just, you know, awful -- 17 awful, you know -- just overall content that is not 18 specifically banned by law, but that someone generally -- the 19 general public doesn't want to see it on its -- on its page. 20 It's -- it's tough to kind of sort of give a really refined 21 answer on that, because a lot of it is sort of when you see it, 22 you know, you would sort of -- may have objections to it.</p> <p>23 Q. (BY MR. WALTON) And who determines whether the 24 content is harmful?</p> <p>25 MR. FREDRICK: Object to form.</p>		<p>1 Q. Okay. And are you aware of -- are you aware of 2 within this world of content moderation, are you aware of what 3 role AI plays versus what role human input plays?</p> <p>4 MR. FREDRICK: Object to the form.</p> <p>5 You can answer.</p> <p>6 A. You know, all these social media platforms are 7 different. I -- I wouldn't be able to specifically say for any 8 of them, how specifically one way or the other.</p> <p>9 Q. (BY MR. WALTON) Okay. If that third sentence -- and 10 there again, we're still in paragraph 4 of your declaration.</p> <p>11 That third sentence states: In the overwhelming number of 12 cases, removal of offensive content is accomplished as 13 intended.</p> <p>14 How do you know that?</p> <p>15 A. We base that on a general understanding that of the 16 number of the reports that are provided by some of the 17 companies, of how much they've removed that -- that is harmful. 18 You know, some of those reports show that the -- the sheer 19 number of posts and then the number of what they removed, we 20 sort of felt generally that they -- they do remove a lot of 21 the -- the threats that -- that are -- of posts that 22 contain things that they would say they would remove. "They" 23 being social media platforms.</p> <p>24 Q. Sure. Do you know -- do you know what the ratio is 25 between offensive content that is successfully removed versus</p>	
<p>1 You may answer.</p> <p>2 A. I think, generally, you know, every social media 3 platform functions differently. I think they set a -- a 4 general guidelines, community standards, everybody -- every -- 5 each company uses kind of a different name for it, but just 6 generally, here's -- here's what you can and can't do, can or 7 can't say on our platform, which is sort of ever-revolving, I 8 will note, just as -- as threats kind of evolve.</p> <p>9 Q. (BY MR. WALTON) I guess, are -- are you aware -- are 10 you aware within TechNet's members who operates social media 11 platforms, whether they are evaluating content as harmful, 12 whether that is done by humans or whether it's done by some 13 sort of mechanistic process?</p> <p>14 MR. FREDRICK: Object to the form.</p> <p>15 You can answer.</p> <p>16 A. Generally, I believe the TechNet members that are 17 social media platforms, use both a little -- a -- you know, 18 both. I don't know kind of the equation to note what -- what 19 is done by AI versus what's done -- and how much -- how many 20 humans sort of help review that -- I apologize -- but I would 21 say it's a mixture both -- of both.</p> <p>22 Q. (BY MR. WALTON) Sure. And just to clarify for the 23 record, when you use the abbreviation AI, are you referring to 24 artificial intelligence?</p> <p>25 A. Yes. Just sort of help -- yeah.</p>	35	<p>1 the offensive content that is not removed?</p> <p>2 MR. FREDRICK: Objection; form.</p> <p>3 A. I -- I don't know that. Like I mentioned, they're 4 all different. I couldn't speak for every single one of them.</p> <p>5 Q. (BY MR. WALTON) Sure. So when you say the 6 overwhelming number of cases, do you know whether that is more 7 than 50 percent or less than 50 percent?</p> <p>8 MR. FREDRICK: Objection; form.</p> <p>9 A. I don't -- I don't know that. It was a long time ago 10 since I looked at the -- the types, sort of, recap reports that 11 the companies provide.</p> <p>12 Q. (BY MR. WALTON) Okay.</p> <p>13 MR. WALTON: We've been going almost an hour. 14 How about we go ahead and take maybe a ten-minute break.</p> <p>15 Is that okay with you, Matt?</p> <p>16 MR. FREDRICK: Sure.</p> <p>17 THE REPORTER: Okay. Off the record.</p> <p>18 (Recess was taken from 2:59 p.m. to 3:09 p.m.)</p> <p>19 THE REPORTER: The time is 3:09 p.m. We're back 20 on the record.</p> <p>21 Q. (BY MR. WALTON) Mr. Esparza, we are back after a 22 brief break. Are you ready to proceed with your deposition?</p> <p>23 A. Yes.</p> <p>24 Q. Let's go look at paragraph 5 of your declaration now. 25 It begins at the bottom of the fourth page in my PDF file. Are</p>	37

<p>1 you able to see paragraph 5 of your declaration, sir?</p> <p>2 A. Yes.</p> <p>3 Q. I'm actually going to go to a portion of paragraph 5</p> <p>4 that is at the top of the next page. We're about the sixth</p> <p>5 line down from the top of that page or so. It's the sentence</p> <p>6 that begins with: Content including threatening or</p> <p>7 intimidating messages, conspiracy theories, anti-vaccine</p> <p>8 misinformation, holocaust denial, and white supremacy is not</p> <p>9 explicitly allowed to be removed by social media platforms.</p> <p>10 Do you see that sentence?</p> <p>11 A. Yes.</p> <p>12 Q. What does threatening or intimidating messages mean?</p> <p>13 MR. FREDRICK: Objection to the form.</p> <p>14 But you can answer.</p> <p>15 A. I -- I mean, I would say it's -- it's if there's a --</p> <p>16 a message or any kind of post that someone makes that the other</p> <p>17 person receives at a -- as a potential threat or that the</p> <p>18 message, it -- it intimidates that individual, that -- that</p> <p>19 would be a threatening or intimidating message.</p> <p>20 Q. (BY MR. WALTON) And who decides whether a particular</p> <p>21 message is threatening or intimidating?</p> <p>22 MR. FREDRICK: Objection; form.</p> <p>23 You may answer.</p> <p>24 A. I think the -- the recipient of whoever receives that</p> <p>25 may feel like it is -- it is -- like it is a threat that they</p>	<p>38</p> <p>1 flags it and says this is threatening or intimidating and then</p> <p>2 at that point take the message down?</p> <p>3 MR. FREDRICK: Objection; form.</p> <p>4 A. That was a -- a really long question. Sort of --</p> <p>5 Q. (BY MR. WALTON) Yeah.</p> <p>6 A. -- break that down for me.</p> <p>7 Q. Sure. Sure. I'm trying to -- to understand what --</p> <p>8 what the proper role is, as you see it, as TechNet sees it, for</p> <p>9 a social media platform is. If there's a threatening or</p> <p>10 intimidating message out there, should the social media</p> <p>11 platform attempt to remove that threatening or intimidating</p> <p>12 message before it reaches a recipient, or should the platform</p> <p>13 wait until the recipient says, I received this, please remove</p> <p>14 it, before they respond to remove the message? Does that make</p> <p>15 sense?</p> <p>16 A. Yes.</p> <p>17 MR. FREDRICK: Objection; form.</p> <p>18 A. It -- it -- yeah. It makes a little bit more sense.</p> <p>19 And I would respond it -- it depends on what that message is.</p> <p>20 And then two, it depends on the platform itself.</p> <p>21 Q. (BY MR. WALTON) Is there ever a situation where you</p> <p>22 believe it would be appropriate for a social media platform to</p> <p>23 remove a message that is deemed to be threatening or</p> <p>24 intimidating before it reaches its intended recipient?</p> <p>25 A. Repeat the first part. I followed you on the last</p>	<p>40</p>
<p>1 receive or -- or it is meant to send intimidation. I think</p> <p>2 oftentimes -- yeah. I think it's the recipient that's the main</p> <p>3 one that -- that typically is the one that has that sort of a</p> <p>4 reaction to a message like that.</p> <p>5 Q. (BY MR. WALTON) So how -- how would a social media</p> <p>6 platform know whether a particular message sent to a particular</p> <p>7 individual or a group of individuals was or was not threatening</p> <p>8 or intimidating?</p> <p>9 MR. FREDRICK: Objection; form.</p> <p>10 You can answer.</p> <p>11 A. I think if the -- it -- it kind of depends. It</p> <p>12 depends on what the message is. If the person said, I plan</p> <p>13 to -- I hate all blank, I plan to shoot the next blank that I</p> <p>14 see, that -- that could be seen as a -- as a threatening</p> <p>15 message. And -- and I think that -- kind of broad depending on</p> <p>16 what the type of language -- yeah.</p> <p>17 It's -- it's harder to sort of -- it's not sort</p> <p>18 of a black and white, but if you see it, you definitely know</p> <p>19 it's not a sort of -- there's some context. And, you know, a</p> <p>20 lot of times -- or I shouldn't say a lot of times -- sometimes</p> <p>21 users will then flag it to the social media platform that a</p> <p>22 message that was sent, it is threatening, they would not like</p> <p>23 to see it, or it should be taken down.</p> <p>24 Q. (BY MR. WALTON) Is it sufficient for a social media</p> <p>25 platform to wait until a recipient receives a message and then</p>	<p>39</p> <p>1 part, but...</p> <p>2 Q. Yeah. It -- do you believe that there could be a</p> <p>3 situation where a social media platform should remove a message</p> <p>4 that is deemed to be threatening or intimidating before that</p> <p>5 message reaches its intended recipient?</p> <p>6 A. Again, it would depend on -- on -- on the message.</p> <p>7 Yeah.</p> <p>8 Q. I understand it -- it would depend on the message.</p> <p>9 I'm just asking: Would it ever be appropriate -- are there any</p> <p>10 sorts of messages where it would be appropriate to remove them</p> <p>11 before they reached the recipient?</p> <p>12 A. You know, I -- I -- I don't know.</p> <p>13 Q. What about the next phrase in that sentence after</p> <p>14 "threatening or intimidates messages"? You used the phrase</p> <p>15 "conspiracy theories." How does a social media platform</p> <p>16 determine what is a conspiracy theory?</p> <p>17 MR. FREDRICK: Objection; form.</p> <p>18 A. I don't know exactly how -- how they do that.</p> <p>19 Oftentimes they use the terms conspiracy theories in the sort</p> <p>20 of community standards or the guidelines that I've talked about</p> <p>21 before, but I don't know how they individually will say, you</p> <p>22 know, X amount of activity is now -- now we consider a</p> <p>23 conspiracy theory. I -- I don't know. I would imagine it</p> <p>24 varied by company per platform.</p> <p>25 Q. (BY MR. WALTON) Sure. And does TechNet have a</p>	<p>41</p>

	42		44
<p>1 position as to what the criteria should be for determining 2 whether something is a conspiracy theory? 3 A. We don't. 4 Q. Okay. And I guess just to save time, the other 5 categories in this sentence, does TechNet have stated criteria 6 for determining what does and does not constitute the various 7 types of information that you described in the sentence we're 8 looking at? 9 A. Not that I know of. 10 Q. Okay. The last sentence in paragraph 5 states that 11 this would cause "real-world irreversible harm in Texas 12 communities and beyond."</p> <p>13 What is the "real-world irreversible harm" that 14 you're talking about?</p> <p>15 A. What I -- what I meant with that was, you know, that 16 some of the -- the content in the categories that were listed 17 in -- in the -- higher up in the paragraph, can be -- can be 18 pretty shocking to a lot of people, can -- can be offensive. 19 You can imagine that someone that, you know -- that -- that 20 finds imagery of the holocaust or -- or any sort of those -- 21 those details, that if they see content that is about the 22 denial of it or just Nazi propaganda or -- or use of that, that 23 they would be very -- they would not want to see that type of 24 content.</p> <p>25 Same thing for like if a child sees some --</p>		<p>1 Q. Well, those were going to be my next questions. 2 A. Okay. 3 Q. So it seems here in your sentence that you've used 4 three different terms that -- that's important to social media 5 platforms: To be safe, to be friendly, and to be workplace 6 friendly. 7 A. Yup. 8 Q. So correct me if that was a misinterpretation of your 9 declaration, but assuming that is what you're trying to say, 10 can you walk me through what each of those three terms mean? 11 MR. FREDRICK: Object to form. 12 You can answer. 13 A. Yeah. So in -- in drafting this, what -- I thought 14 about the -- the safety piece in some of the examples that -- 15 that were used in -- in conversations was -- let me double 16 check -- states like there -- there's no sort of financial 17 scams or, you know, that there is some -- some talk -- and this 18 was sort of Florida. That's where Florida sort of started, 19 where if you make it easier, if you let nefarious users know 20 how to give -- how to sort of circumvent any potential, you 21 know, ways to block their messages, that human traffickers will 22 often use -- sex-trafficking will use, you know, some of -- 23 some of the sites to potentially, you know, groom or to 24 facilitate, you know, transactions. I'm -- I'm not even sure 25 if I'm using the terms correctly. But this -- this sort of</p>	
<p>1 some -- something that is offensive. What we meant there was 2 that social media platforms were going to be limited under HB 3 20 to remove some content, they would -- they would -- that 4 their users would potentially find offensive and -- and harmful 5 and that, it -- you know, this bill would make it harder for 6 them to remove some of that content. And if a -- a user who 7 doesn't want to see that type of content interacts with it 8 or -- or views it with -- as -- on their feed or part of their 9 timeline, that it could cause harm to them, and leave the 10 platform all together because of what they saw. That's kind of 11 generally what -- what I was discussing with that in that 12 sentence.</p> <p>13 Q. Well, that takes me into some of the questions I 14 wanted to ask about paragraph 6. So let's go ahead and scroll 15 down to paragraph 6. I'm still on page 5 of my PDF document of 16 the declaration, but regardless of what page it is for you, are 17 you able to see paragraph 6 of the declaration?</p> <p>18 A. Yes, I can see it.</p> <p>19 Q. The -- the first sentence there at the end refers 20 to -- well, it states: It is critical for the business that 21 the platforms are safe and family and workplace friendly.</p> <p>22 What does it mean for a social media platform to 23 be safe?</p> <p>24 A. To be safe? That's kind of a tough question. Are 25 you asking me if there's family or workplace friendly safe?</p>	43	<p>1 concern that -- that -- and so in the -- in using the word 2 "safe," we're just sort of saying from some of those threats, 3 make sure that social media platforms are able to remove some 4 of those risks.</p> <p>5 (BY MR. WALTON) I see. So I heard a couple things 6 there that I just want to go back and clarify. In talking 7 about -- you mentioned human traffickers, you know, trying to 8 avoid these roadblocks, and I'm wondering, is -- is that -- 9 well, how does -- how does HB 20 in your understanding affect 10 the ability of human traffickers to utilize social media 11 platforms?</p> <p>12 A. The concern was in the provisions that require social 13 media platforms to report why something was blocked and then 14 provide some additional information on that. The -- the 15 concerns then would say if -- if, you know, platform A just 16 blocked, you know -- said that, as part of their, you know, 17 content moderation processes, if they remove a post that says 18 the -- the term "sex-trafficking" or that it bumps that to 19 human review or -- or whatever, that there be something that 20 would then -- a nefarious user, in this case, a sex-trafficker, 21 would say, you know -- you know, if -- if you use these certain 22 terms, Facebook is more likely to double check your post or 23 not.</p> <p>24 The -- the arguments we were making was sharing 25 more information about how that, you know, each -- each social</p>	45

<p>1 media platform runs their content moderation, could be seen as 2 a blueprint for nefarious users to -- to understand how to 3 evade that -- that moderation.</p> <p>4 Q. Okay. What -- what then do you mean when you say, 5 "family and workplace friendly"?</p> <p>6 A. What I meant with that was, back to the -- you know, 7 our conversation about the -- the harmful content and -- and 8 that -- some of that content, again, may be legal to -- to post 9 and may be able to say or, you know -- but it -- but it's just 10 something that a traditional user may say, I don't want to see 11 it on my feed. I don't want to be forced to -- to read about, 12 you know, some of the examples that I mentioned: 13 Misinformation about vaccines, or -- or holocaust, now, content 14 and if they're able to see that.</p> <p>15 And -- and -- and some of that, too, is schools 16 and workplaces, employers, oftentimes, you know, will block 17 certain sites that they think are offensive or that they've 18 received feedback. I -- I typically don't know how this works, 19 but I know that it exists. That's the kind of thing I'm 20 talking about, that clearly schools and employers want to make 21 sure that, you know, that their employers are -- are -- kind of 22 that -- that's where I was kind of going with that piece. Is 23 that there -- there's some understanding of that. Am I making 24 any sense with that.</p> <p>25 Q. I -- I think so. I just want to clarify when you --</p>	<p>46</p> <p>1 MR. FREDRICK: Sorry. You can -- you can 2 answer.</p> <p>3 A. That I'm aware of, I -- I don't believe our state 4 policy principles talked -- go into that.</p> <p>5 Q. (BY MR. WALTON) Let's see. Also in paragraph 6, in 6 the second sentence, you state: If affected TechNet social 7 media platform members are unable to maintain a family- and 8 workplace-friendly platform, it will affect their ability to 9 attract advertisers that will not want to be associated with 10 objectionable content.</p> <p>11 How do you know that?</p> <p>12 MR. FREDRICK: Objection; form.</p> <p>13 A. I don't.</p> <p>14 Q. (BY MR. WALTON) Have you talked to any advertisers 15 about whether their advertisements will be affected by HB 20?</p> <p>16 A. Advertisers themselves, no. Where I got -- received 17 this concern was kind of in conversations about what the 18 effects would be. And -- and when I talked a little bit about 19 the -- the -- the content, I don't remember who sort of brought 20 up this sort of -- this idea that -- that, you know, you can 21 sort of imagine that if you have a -- you know, your -- your 22 landing page, and then you have sort of a -- an ad or whatever 23 company, that if there's some objectionable content, they may 24 not -- they're not going to love having their company banner or 25 whatever ad next to something people would find objectionable.</p>
<p>47</p> <p>1 when you talk about schools and employers, are you aware of any 2 schools or employers that would be social media platforms or 3 email service providers regulated by HB 20?</p> <p>4 A. Any schools or employers? Aside from, like, Facebook 5 that employs people in Texas, or the traditional ones that 6 we've talked about, you know, no.</p> <p>7 Q. Okay. What if a user had the opportunity to 8 self-select, self-screen, the kind of material that they didn't 9 want to see? So that instead of the platform doing it for 10 them, it was the user saying, Well, I don't want to see 11 anything like that, and so they -- they sort of activate that 12 option on the user's end to -- to moderate their own content, 13 would -- would TechNet have concerns with that?</p> <p>14 MR. FREDRICK: Objection; form.</p> <p>15 A. I -- I don't know that we -- that -- that's a tough 16 question to ask. I have not been given any indication that 17 members want TechNet to weigh in specifically on something like 18 that. But I just --</p> <p>19 Q. (BY MR. WALTON) Okay.</p> <p>20 A. -- have not heard that concern.</p> <p>21 Q. So -- so as you sit here today, TechNet doesn't have 22 a position as to -- as to the -- the possibility of user 23 self-selection or self-moderation of content?</p> <p>24 MR. FREDRICK: Objection; form.</p> <p>25 A. That I'm aware of.</p>	<p>47</p> <p>1 Q. But you haven't conducted any surveys or other 2 research regarding what advertisers would or would not do if 3 required to comply with HB 20?</p> <p>4 A. No.</p> <p>5 MR. FREDRICK: Objection; form.</p> <p>6 Q. (BY MR. WALTON) The next sentence states: 7 Additionally, users may decide to leave the platform if 8 objectionable content that they report is not removed.</p> <p>9 How do you know that?</p> <p>10 A. I -- I don't know for sure.</p> <p>11 Q. So there again, have you done any research regarding 12 users' decision to leave a platform if required to comply with 13 HB 20?</p> <p>14 A. Typically, like if enacting HB 20, no, I have not 15 done research on that.</p> <p>16 Q. Let's see. Paragraph 7 of your declaration, you talk 17 about section 230 of the Federal Communications Decency Act. I 18 don't want to get bogged down into too many details, but 19 generally speaking, does TechNet believe that section 230 is a 20 good law?</p> <p>21 MR. FREDRICK: Objection; form.</p> <p>22 You can answer.</p> <p>23 A. I don't know that we have an opinion on that. I 24 would need to refer to the -- the state policy, principles. I 25 have not looked at that one in a good -- in a good while on</p>

<p>1 that.</p> <p>2 Q. (BY MR. WALTON) Do you believe that section 230</p> <p>3 gives sufficient protection to media platforms?</p> <p>4 A. I --</p> <p>5 MR. FREDRICK: Objection to form.</p> <p>6 You can answer.</p> <p>7 THE WITNESS: I'm sorry, Matthew.</p> <p>8 A. I personally, I -- I -- I don't know.</p> <p>9 Q. (BY MR. WALTON) As you sit here today, do you have</p> <p>10 any criticisms of section 230?</p> <p>11 MR. FREDRICK: Objection; form.</p> <p>12 A. I personally don't.</p> <p>13 Q. (BY MR. WALTON) And are you aware whether TechNet</p> <p>14 has any official criticisms of section 230?</p> <p>15 A. In my time at TechNet, I have not heard that TechNet</p> <p>16 as an entity, has conveyed any concerns on section 230.</p> <p>17 Q. Okay. Let's go to paragraph 8, then. We're getting</p> <p>18 close. Paragraph 8 refers to threats. I'm not going to take</p> <p>19 the time to read every instance, but let me -- let me read one</p> <p>20 example. Is -- I believe it's the third sentence of</p> <p>21 paragraph 8. That's section 321.054, you say: It will make it</p> <p>22 difficult for email service providers to block spam and other</p> <p>23 malicious threats as the exceptions in statute do not cover all</p> <p>24 forms of threats.</p> <p>25 What do you mean by "threats"?</p>	<p>50</p> <p>1 that email service providers are able to block emails that may</p> <p>2 cause harm to email users and avoid the unintended consequences</p> <p>3 that could result in an influx of spam and missed emails in</p> <p>4 Texans inboxes.</p> <p>5 First, what do you mean by "harm to email</p> <p>6 users"?</p> <p>7 MR. FREDRICK: Objection; form.</p> <p>8 A. Just like we talked about. Some, like, malicious</p> <p>9 code or a, you know, virus or -- and -- and something that</p> <p>10 would -- that would harm someone's computer or steal their</p> <p>11 data. That that kind of online threat or -- or harm is what I</p> <p>12 was talking about there.</p> <p>13 Q. (BY MR. WALTON) I see. So is that the -- the same</p> <p>14 idea as what you were describing as threats earlier in this</p> <p>15 paragraph?</p> <p>16 A. Similar. I -- the harm, like, sort of like, you can</p> <p>17 steal your identity and identity fraud, and any theft would be</p> <p>18 a harm, the threat would be the way that they get that</p> <p>19 information from a phishing or it's -- yeah.</p> <p>20 Q. I see.</p> <p>21 A. Pretty much.</p> <p>22 Q. So the harm would be the -- the consequences that</p> <p>23 result from the threats that you described earlier?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. All right. Mr. Esparza, I'm just looking over</p>
<p>1 MR. FREDRICK: Objection; form.</p> <p>2 You may answer.</p> <p>3 A. I apologize.</p> <p>4 The -- the concern is on -- on this piece was</p> <p>5 that we are trying to be pre -- pre -- prescriptive -- I</p> <p>6 apologize -- on what those threats are. And then -- and -- and</p> <p>7 that if anything is left out, then -- and is not included in</p> <p>8 there. And so the concerns that I shared, especially to</p> <p>9 Representative Cain's office, is if we're required to define it</p> <p>10 and put it in statute now, what happens in the future where</p> <p>11 there are, sort of, any other type of -- of online, you know --</p> <p>12 we think in sort of -- that I think when I read that language</p> <p>13 is sort of some phishing, some other sort of ransomware, some</p> <p>14 other sort of duplicate code that -- that some of those threats</p> <p>15 are included in those threats, but I don't know if someone's</p> <p>16 going to invent something that doesn't fall under the specific</p> <p>17 definition. And by virtue of not including it, then it -- it's</p> <p>18 not included there. So that's kind of a convoluted way, just</p> <p>19 sort of just left the door open for any sort of new type</p> <p>20 of computer/online sort of threat. Does that make sense?</p> <p>21 Q. (BY MR. WALTON) I -- I think so, thank you.</p> <p>22 The -- the sentence that begins at the bottom of</p> <p>23 the page there, still in paragraph 8, and it's -- it continues</p> <p>24 on to the top of the very last page. It says, specifically:</p> <p>25 With billions of spam emails sent each day, it is important</p>	<p>51</p> <p>1 my notes real quick to make sure I didn't miss anything. I</p> <p>2 think we're getting close to the end here.</p> <p>3 You mentioned -- we talked a little bit earlier</p> <p>4 about how TechNet came to be involved in submitting a</p> <p>5 declaration for purposes of the Florida lawsuit. Why -- why is</p> <p>6 TechNet not a plaintiff in that Florida lawsuit?</p> <p>7 MR. FREDRICK: Objection; form.</p> <p>8 A. I don't know the exact answer to that. It could be</p> <p>9 that we just were not equipped to do that, but we -- we mostly</p> <p>10 focus on the law, being an advocacy portion of it -- of -- of</p> <p>11 these issues.</p> <p>12 Q. (BY MR. WALTON) Okay. And then a similar question</p> <p>13 for this lawsuit: Why is TechNet not a plaintiff in this Texas</p> <p>14 lawsuit?</p> <p>15 MR. FREDRICK: Objection; form.</p> <p>16 A. Similar answer. It's just...</p> <p>17 Q. (BY MR. WALTON) If a user of a social media platform</p> <p>18 today, right now, is -- feels that they're being intimidated,</p> <p>19 harassed, threatened by content, that they are receiving on</p> <p>20 that social media platform, are you aware of any recourse that</p> <p>21 that user may have?</p> <p>22 MR. FREDRICK: Objection; form.</p> <p>23 A. That the user may have on the social media platform</p> <p>24 for not removing?</p> <p>25 Q. (BY MR. WALTON) Yes.</p> <p>53</p>

1 A. I -- I'm not aware.

2 MR. WALTON: All right. Well, thank you for

3 your patience, sir.

4 I will, at this time, just take it I have no

5 further questions at the moment and pass the witness.

6 MR. FREDRICK: Plaintiffs reserve any questions.

7 THE REPORTER: Okay. Mr. Fredrick, do you need

8 to order a copy?

9 MR. FREDRICK: Yes, please.

10 THE REPORTER: Okay. Off the record.

11 (Proceedings concluded at 3:40 p.m.)

15 (Per Federal Rule of Civil Procedure 30(e)(1),
16 signature was not requested before the completion of the
17 deposition by Counsel nor the Deponent and, therefore, was
18 waived)

1 CHANGES AND SIGNATURE
2 WITNESS NAME: SERVANDO ESPARZA DATE: NOVEMBER 15, 2021
3 Reason Codes: (1) to clarify the record; (2) to conform to the
4 facts; (3) to correct a transcription error; (4) others (Please
5 explain)
6 PAGE LINE CHANGE REASON CODE
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
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14 _____
15 _____
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21 _____
22 _____
23 _____ Signature: _____ Date: _____
24 ACKNOWLEDGMENT OF DEPONENT
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55

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION
4 NETCHOICE, LLC d/b/a)
5 NETCHOICE, a 501(c)(6))
6 DISTRICT OF COLUMBIA)
7 ORGANIZATION, COMPUTER &)
8 COMMUNICATIONS INDUSTRY)
9 ASSOCIATION d/b/a CCIA, a)
10 501(c)(6) NON-STOCK VIRGINIA)
11 CORPORATION,) CIVIL ACTION NO.
12 Plaintiffs,) 121-cv-00840-RP
13)
14 VS.)
15)
16 KEN PAXTON, in his official)
17 capacity as Attorney General)
18 of Texas,)
19 Defendant.)
20 *****
21 REPORTER'S CERTIFICATION
22 DEPOSITION OF SERVANDO ESPARZA
23 NOVEMBER 15, 2021
24 *****
25 I, Ashley Cason, Apprentice Reporter and Notary
Public in and for the State of Texas, hereby certify to the
following:
That the witness, SERVANDO ESPARZA, was deposed
by the officer and that the transcript of the oral deposition
is a true record of the testimony given by the witness;
That the original deposition was delivered to BEN
WALTON, Custodial Attorney;

58

1 That a copy of this certificate was served on all
2 parties and/or the witness shown herein on
3 _____.

4
5 I further certify that pursuant to FRCP No.
6 30(f)(i), the signature of the deponent:

7
8 _____ was requested by the deponent or a party
9 before the completion of the deposition and that the signature
10 is to be returned within 30 days from date of receipt of the
11 transcript. If returned, the attached changes and Signature
12 page contains any changes and the reasons therefor;

13
14 _____X____ was not requested by the deponent or a party
15 before the completion of the deposition and that it is being
16 delivered to.

17
18 I further certify that I am neither counsel for,
19 related to, nor employed by any of the parties or attorneys in
20 the action in which this proceeding was taken. Further, I am
21 not a relative or employee of any attorney on record in this
22 case, nor am I financially or otherwise interested in the
23 outcome of the action.

24
25

59

1 Certified to by me this 15th of November, 2021.
2
3

4 _____
5 Ashley Cason, Texas ACR No. 10732
6 Expiration Date: 05/31/2023
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Numbers		
100 28:13 140-something 28:15 15th 4:3 1st 13:22 2019 15:12 2021 4:3 230 49:17,19 50:2,10, 14,16 2:02 4:3 2:59 37:18 30e1 54:15 321 31:25 321.054 31:16 32:4 50:21 3:09 37:18,19 3:40 54:11	48:15 advertisers 48:9,14, 16 49:2 advocacy 53:10 Affairs 10:22 affect 45:9 48:8 affected 31:20 48:6, 15 after 27:23 37:21 41:13 afternoon 4:25 20:3 again 8:23 19:20 25:14 36:10 41:6 46:8 49:11 against 10:15 agenda 27:3,6 ago 37:9 agreed 22:12 ahead 5:6 7:3 10:23 11:1 30:24 37:14 43:14 alleviated 25:20 allow 5:22,24 allowed 38:9 almost 37:13 along 25:6 already 5:8 6:10 also 5:16 17:5 20:9, 13,22 22:18,23 48:5 Amazon 30:2 amended 23:8 amount 41:22 Ann 22:24 another 5:22 18:5 30:24 answer 6:16 7:4 8:17, 18 9:3,8 12:6 14:11,14,22 15:9 17:18 21:5,14 22:2, 9 25:12,25 27:9,21 28:23 29:5,21 31:22 32:6,21 33:10,19 34:10,21 35:1,15 36:5 38:14, 23 39:10 44:12 48:2 49:22 50:6 51:2 53:8,16 answered 10:16 answering 5:21,24	answers 7:5 anti-vaccine 38:7 anyone 7:17 10:19 20:7 anything 9:16 11:18 20:15 21:22 47:11 51:7 53:1 Apologies 13:13 apologize 35:20 51:3, 6 appearances 4:13 appears 19:18,19,21, 23 Apprentice 4:10 appropriate 40:22 41:9,10 areas 13:20 arguments 8:22 10:1 10:1 12:1 45:24 arises 33:4,7 around 13:1 artificial 35:24 Ashby's 9:22 Ashley 4:10 Aside 47:4 ask 6:19,21 7:3 8:1 19:2 31:3 43:14 47:16 asked 7:3 16:1 22:25 asking 23:4 41:9 43:25 associated 48:9 Association 12:24 14:7 15:5 18:7 associations 12:14 assume 23:16 assumed 29:11 assuming 44:9 attempt 40:11 attend 28:9 attended 28:12,16,18 attention 6:4,23 17:9 Attorney 4:18 5:8 attorneys 7:16,18 attract 48:9 attractive 33:23 Austin 4:7,8,17,19 autonomous 13:6 available 27:19
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